

**NEW YORK STATE DEPARTMENT OF HEALTH**

**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**Bid Opening**

**7-22-05, 5:00 PM**

**New York State  
Department of Health  
Erastus Corning II Tower  
The Governor Nelson A. Rockefeller  
Empire State Plaza  
Albany, NY 12237**

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## **A. INTRODUCTION**

The New York State Department of Health (DOH) is seeking to award a contract to a vendor on behalf of itself and the Office of Temporary and Disability Assistance (OTDA) to implement a two-phase health and human services Fraud, Waste, Abuse, Recovery and Detection project (FWARD). The successful vendor will assist in identifying new activities not already being undertaken by the State to combat fraud, waste and abuse in health care and human services programs administered by the DOH Medicaid program and OTDA; and to provide the means of avoiding inappropriate future payments and detecting and recovering any overpayments.

The successful vendor will receive no reimbursement for completing FWARD Phase I. Reimbursement will only be provided in FWARD Phase II on a contingency fee basis for the recovery of improper health and human services payments.

Prospective vendors should be aware that there are several State Medicaid program initiatives currently underway to ensure the application of all available Medicare and commercial insurance. This award seeks to identify new initiatives.

This RFP, any amendments, and answers raised to questions from prospective bidders (Q&As) will be posted on the DOH website (<http://www.health.state.ny.us>).

## **B. BACKGROUND**

### **Department of Health Medicaid Program:**

DOH, in conjunction with the fifty-eight local districts, administers the Medicaid program throughout New York State, with a federal, State and local cost totaling approximately \$42 billion in State fiscal year 2004-05. Depending on the eligibility of the client, Medicaid program costs are generally shared by the federal, State, and local governments (county governments and New York City). Local Departments of Social Services (LDSS) are responsible for the collection of information and documentation necessary to support an eligibility determination and the assignment of recipients to federal participating categories, thereby reducing costs to the State and local governments.

DOH's Office of Medicaid Management (OMM) is committed to maintaining program integrity and combating Medicaid fraud, waste and abuse either by providers of Medicaid services or recipients of Medicaid benefits. Many factors have contributed to the rise in health care costs. Ensuring that the rising costs are not attributable to fraud, waste or abuse is a primary goal of DOH. Given the size of the New York's Medicaid program, this concern takes on a heightened level of significance.

In 1996, responsibility for administration of the Medicaid program in New York was transferred from the New York State Department of Social Services to DOH. OMM within DOH, was assigned responsibility to administer the Medicaid program. Consistent with federal regulations, OMM created the Division of Medicaid Fraud

Control and Program Integrity to address program integrity issues. This Division has the overall responsibility for controlling fraud, waste and abuse; including performing analysis for the purposes of targeting areas for further investigation. The Division strives to:

- Enroll quality providers;
- Ensure the accuracy of Medicaid payments to providers;
- Combat fraudulent and other improper provider activities;
- Avoid inappropriate Medicaid payments and recover inappropriate Medicaid overpayments;
- Coordinate fraud, waste and abuse activities within DOH, and with other State and federal agencies; and
- Ensure the overall integrity of the Medicaid Program by enforcing program requirements.

DOH and OMM must address many, and often competing, agendas. Recipients must be ensured access to uniform, high quality medical care as required by both federal and State regulations. This is accomplished by contracting with vendors who can demonstrate that they are qualified to provide medical care, services, and supplies. DOH must manage the delivery of those services and control costs, while ensuring there is a sufficient number of high quality providers. The very size of the program requires DOH to target its investigations and audits of providers.

#### Medicaid Management Information System (MMIS) Reprocurement

The contractor selected as a result of this RFP must be prepared to modify its systems to conform to the requirements of the Replacement Medicaid System (eMedNY).

#### Medicaid as a Last Resort Benefit

The benefits available under the Medicaid program are considered to be last resort benefits. Under New York State law, third party liability benefits including health, hospital, assignable income protection, accident insurance benefits, Medicare, etc., generally must be exhausted before Medicaid makes any payment. These benefits are available through a wide variety of sources, including employers, unions, colleges, fraternal organizations, liability carriers, court actions, private insurers, or the federal government (Medicare, Tricare, Tricare for Life, CHAMPVA). Exceptions are made for prenatal and preventive pediatric care or for medical care provided at a time when the source of payment may be in question, as in an automobile accident insurance settlement.

If it is determined that Medicaid benefits which have been paid could have been covered by a third party, the DOH and/or LDSS may exercise their right to recover the Medicaid payment where appropriate.

#### Identification of Revenue to Avoid Program Costs

To ensure that Medicaid is the payer of last resort, DOH complies with federally mandated cost avoidance requirements to deny and avoid paying claims when there is a known third party liability available to provide payment. These third party liabilities are identified with a two-position insurer code and are maintained through eMedNY. They are added to this

database by the LDSS as a result of their investigations following recipient eligibility interviews; and by DOH after matching Medicaid recipient files with insurance, Medicare and other third party liability files. Responsible relatives (usually absent parents) are also matched with insurance carrier files. Recovery of Medicaid payments is pursued if the liability is not identified until after Medicaid has paid the claim.

Insurance carrier codes are currently two character codes (including Medicare Part A and B). Upon adoption of the National Health Plan ID, all identifiers will be Health Insurance Portability and Accountability Act (HIPAA) compliant.

#### Medicaid Provider Responsibilities

Prior to billing Medicaid, providers are required to access the Medicaid Eligibility Verification System (MEVS). During this access, the provider determines if the recipient is eligible for Medicaid on the date of service and also learns if a third party resource is available and, if so, what scope of services are covered. If a third party covers the provider's service, then the provider will not be paid by Medicaid unless there is evidence on the claim that the third party has been billed first. If there is no indication on MEVS that third party coverage is available for that service, a bill can be submitted directly to Medicaid for payment.

#### **Office of Temporary and Disability Assistance:**

The programs overseen by OTDA provide a wide range of services and supports to low-income working families as well as to poor families. OTDA provides technical assistance, systems support, oversight and monitoring of LDSS; ensures appropriate claiming and accountability to the federal government; adjudicates Title II (Social Security Disability Income, SSDI) and Title XVI (Supplemental Security Income, SSI) medical claims for the federal government; as well as developing and implementing the needed program and fiscal policies and regulations to operate the federal and State programs and services. The key programs and services that support OTDA's mission are as follows:

#### Temporary Assistance for Needy Families (TANF) Block Grant

The TANF program (the Family Assistance Program in New York State) provides cash assistance and services to needy families and supportive services to low-income working families. In addition, OTDA supervises the State's Safety Net Assistance program, which provides cash assistance and services to single adults and to families that have exhausted their federal TANF eligibility.

#### Food Stamp Program and Related Outreach

The federal Food Stamp Act provides states with funding for low-income families to purchase food.

### Child Support Enforcement

The State's Child Support Enforcement program helps to ensure that legally responsible persons contribute toward the support of their children. Among the activities undertaken are: the location of absent parents; establishment of paternity; and the establishment, collection and enforcement of child support obligations.

### Home Energy Assistance Program (HEAP)

OTDA manages the federal HEAP block grant to the State, which provides assistance to eligible low-income households to help meet the cost of home energy.

### Disability Determinations Service

Title II of the Social Security Act (SSA) mandates that states perform the medical adjudication of claims filed by State residents.

### Transitional Programs

These programs include local district TANF Services plans; Drug and Alcohol Screening, Assessment and Enhanced Services; Domestic Violence Screening; Welfare Reform Informational Campaign; Food Stamp Outreach and Nutrition Education Program.

### Housing Services

These programs include the Homeless Housing and Assistance Program (HHAP), Single Room Occupancy Support Services Program, the Emergency Shelter Grants Program, Housing Opportunities for Persons with AIDS Program, and the Operational Support for AIDS Housing Program.

### Shelter Services

OTDA is responsible for the regulation of both family and singles shelters for the homeless.

### Refugee Programs

These programs include the Refugee Social Services Program, Targeted Assistance Grant Program, Refugee Resettlement Program, Citizenship Program, Older Refugee Assistance Program, Cuban-Haitian Program, and the Refugee Medical Assistance Program.

OTDA also conducts the necessary administrative hearings related to case closings or denials for temporary assistance, food stamps, Medicaid, employment programs, and cessations of benefits for SSA disability recipients.

OTDA is also responsible for the detection and prevention of fraud and abuse in its public assistance programs. This is accomplished in part by a wide range of statewide program integrity initiatives. These include, but are not limited to, finger imaging of applicants for assistance; front-end detection processes to identify suspect applications for further investigation and computer matching with other states, the Department of Corrections, and Division of Criminal Justice Services. OTDA works with LDSS fraud units to assure

that clients detected by these initiatives are investigated, and the issues appropriately resolved.

## C. FWARD SPECIFICATIONS

### 1. Overview

FWARD is a two-phase project. Phase I consists of a review and evaluation of the current fraud, waste and abuse recovery and detection efforts in DOH and OTDA health care and human services programs; and the identification of areas for improvement and new methodologies/technologies to detect, prevent and recover improper payments. Only one bidder will be awarded a contract based on this RFP. **The vendor will receive no reimbursement for the performance or completion of Phase I.**

Phase II is the implementation of the new overpayment detection and recovery strategies resulting from the vendor's Phase I review and evaluation of the current DOH and OTDA fraud, waste and abuse prevention program. **In Phase II, the vendor will receive a contingency fee as a percentage of recovered health and human services program overpayments, at a level and schedule agreed to by the State.**

The FWARD contract will be revenue-based. There will be no payment to the vendor if the vendor does not recover or obtain revenue. There are two types of revenue possible under this contract:

1. recovery of improper payments;
2. additional Federal Financial Participation (FFP).

There will be no contingency fees paid to the vendor for revenues recovered beyond the period of the vendor's contract.

#### a. **Definitions used in the FWARD RFP and Contract**

##### Definition of "recovery":

For the purposes of this RFP, recovery shall be defined as the net monies that are to be retained by the State and its localities as payors under Medicaid and OTDA programs. "Net" equals the Medicaid and OTDA program recovery resulting from FWARD activities on previously paid claims, less any federal share to be returned from the recovery.

##### Definition of "additional Federal Financial Participation" (FFP):

For the purposes of this RFP, additional FFP shall be defined as the federal share of additional expenditures identified for FFP resulting from FWARD activities, claimed to, and subsequently paid by, the federal agency (ies).



Definition of “revenue”:

For the purposes of this RFP, revenue shall be defined as a recovery and/or additional FFP retained by the State and its localities as payors under Medicaid and OTDA programs.

Definition of “fee calculation”:

The base of any fee calculation will be the revenue retained by the State and its localities as payors under Medicaid and OTDA programs.

**b. FWARD Phase I and Phase II Excluded Areas:**

In general, the vendor selected by this RFP process will be excluded from implementing Phase II fraud, waste, and abuse detection and recovery activities in areas where the State has existing contracts with vendors that are performing such activities, or where the vendors have authorization to perform such activities. In addition, other areas may be excluded at the discretion of the State. (See section C 4. for specific excluded areas)

**2. FWARD Phase I Deliverables**

The vendor will review and evaluate the current fraud, waste, and abuse detection and recovery efforts in DOH and OTDA health care and human services programs. Specifically, to complete Phase I the vendor must:

- 1) evaluate the overall effectiveness of current fraud, waste, and abuse detection activities;
- 2) evaluate existing pre and post-payment reviews;
- 3) evaluate the technologies currently used to detect improper payments;
- 4) identify new initiatives to detect and prevent improper payments;
- 5) estimate the health care and human services program savings (both cost avoidance and recoveries) that could be achieved;
- 6) estimate the cost of implementing recommended improvements and initiatives, including staff costs; and
- 7) estimate the time required to implement recommended improvements and initiatives.

In completing Phase I, the vendor must provide an overall review and evaluation of the DOH and OTDA health care and human services fraud, waste, and abuse detection and recovery effort, except for those areas that are excluded from FWARD (section C. 4).

**The contracted work for Phase I must be completed within six (6) months of the FWARD contract start date, with any extensions granted at the discretion of the State.**

State staff will provide assistance of limited duration to the vendor performing Phase I work, as determined at the discretion of the State.

**The vendor will receive no reimbursement from New York State for Phase I work.**

**a. Phase I Vendor Report**

As a contract deliverable, the vendor must submit a written Phase I report to DOH and OTDA regarding the results of the review and evaluation that includes the seven (7) Phase I components cited above in section C 2. Upon submission, the Phase I report becomes the property of the State.

**b. Phase II Work Plan**

Prior to the commencement of Phase II work, the vendor must submit a detailed Phase II work plan that identifies the project manager and staff assigned, and describes the detailed steps, geographic location, required local district interface, other State agency involvement, and any and all other facets of the project, to the State for review and approval. **The State may request, in writing, at any time that the work plan be modified.**

The work plan must clearly identify the scope of work, detailed steps and the time periods for review. The vendor's scope of work is limited to activities stated and authorized in the work plan approved by the State. Work plans will be reviewed and approved prior to the start of each quarter. No claim or invoice will be submitted or paid unless an approved work plan is on file with the State for the quarter in which the original cases or scope of work are identified.

**c. Contingency Fee Proposal for Phase II**

The vendor must submit a proposal for a Phase II contingency fee to be paid the vendor as a percentage of the net recovery of health and human services program overpayments to the State and localities. The basis of any fee calculation will be the net revenues retained by the State and its localities as payors in health and human services programs.

**The total Phase II contingency payments for five years can not exceed the average five-year percentage contained in the offeror's Financial Proposal.**

The State retains the exclusive right to determine whether to submit any claim to a federal agency and whether to defend against the federal disallowance of any claim which is submitted. If a claim is not submitted or is disallowed, the contractor shall have no right to any fee based on any unpaid claim and shall return any contingency fee or part thereof already paid.

### 3. **FWARD Phase II**

**Phase II cannot begin until the State has approved the vendor's Phase I report, the Phase II work plan, and the vendor's Phase II contingency fee proposal. (See FWARD Phase I Deliverables)** The vendor will implement Phase II using new technologies, methodologies and strategies to detect fraud, waste and abuse; and recover identified health and human services program overpayments. The vendor will:

- implement Phase II consistent with the work plan (approved by the State), requirements and performance standards developed as a result of Phase I;
- validate the levels of fraud, waste and abuse in the areas identified for new initiatives in the Phase II work plan;
- demonstrate the effectiveness of the new fraud, waste and abuse prevention and detection technologies/methodologies proposed by the vendor; and
- investigate and recover overpayments as directed by the State.

State staff will provide assistance of limited duration to the vendor performing Phase II work, as determined at the discretion of the State.

#### a. **Payment for Phase II**

As indicated in section C 2. c., the vendor will be reimbursed for the implementation of Phase II on a contingency fee basis as a percentage of net recovered health and human services program overpayments, according to a level and schedule agreed to with the State prescribed in the FWARD contract.

Payment will be made to the contractor based upon the actual recoveries received, either through checks or adjusted/voided claims, and validated by the State. Payment of such invoices by the State shall be made in accordance with Article XI-A of the New York State Finance Law. No payment shall be made for costs incurred in the preparation of a proposal in response to this RFP, including attendance at required meetings, printing, mailing, or any other cost associated with the preparation of the proposals.

#### b. **FWARD Phase II Contract Duration**

The contract resulting from this RFP is expected to be for a **five-year** period. The State may request that the contract termination date be extended (at least one year) for the purpose of making contractor payments after the contract work period is completed.

The contract is effective upon approval of the Office of the State Comptroller. This agreement may be canceled at any time by the State giving the vendor not less than thirty (30) calendar days written notice that on or after a date therein specified, this agreement shall be deemed terminated and canceled. Time will be allowed to process payments (up to one year following contract expiration).

#### 4. **Specific Areas Excluded from FWARD Phase I and Phase II**

##### a. **Department of Health FWARD Excluded Areas:**

###### 1. Third Party Liability

DOH currently has several contractors that assist in third party benefit identification and Medicaid recovery activities under the direction of OMM. The primary objective of these contracts is to support DOH in the identification and use of Medicare and private health insurance coverage in order to reduce Medicaid costs to the State and local governments. These contracts support Department programs through:

- Retroactive recovery of Medicaid funds which were paid prior to the application of available other insurance. Where dual eligibility or overlapping other insurance eligibility exists for claims paid by Medicaid, the contractor retroactively pursues reimbursement from the liable third party;
- Identification of potential third party payors to ensure that the State's Medicaid Program is the payer of last resort;
- Verifying the integrity of payments made by Medicaid as reported on claims with known Medicare or other insurance eligibility. This activity is designed to verify the Medicare or other insurance payment amount entered on the Medicaid claim as the amount actually paid, and to pursue recovery if any discrepancies in the third party amount resulted in a Medicaid overpayment. The contractor may also be required to pursue recoveries identified by external agencies. Pursuit of these Medicaid overpayments further assures program integrity by recovering funds that are identified through external audit processes; and,
- Utilization of Medicare Part A and Part B coverage for dual eligible Medicaid-Medicare recipients who have received home health care services paid for by Medicaid.

###### 2. Systems Match and Recovery/Audit Efforts

In addition to the third party activities, OMM conducts a broad range of post-payment audit/payment integrity reviews designed to use computer assisted automated matching techniques to analyze Medicaid paid claims to identify potential erroneously paid claims. Work areas to be excluded from Phase II are identified, but not limited to, the following:

- Inpatient Crossover to Emergency Room and Clinic:  
Inpatient, emergency room, and clinic services provided by a hospital can be individually billed to Medicaid under the same MMIS number. During a Medicaid recipient's hospital stay, the inpatient rate is an all-inclusive rate

and there should be no emergency or clinic billings by the hospital for that client during their hospital stay. This match identifies the Medicaid payments and the providers that have billed Medicaid for either clinical or emergency room services during the patient's stay in the hospital.

- **Inpatient Crossover with Home Health, Nursing and Personal Care:**  
It has been found that some Home Health, Nursing and Personal Care agencies continue to bill Medicaid for services while a client is receiving inpatient services. This match will identify any billings from these types of providers during the inpatient stay of the Medicaid recipient.
- **Inpatient/Kick Payments:**  
This match identifies Medicaid clients enrolled in a Managed Care Organization (MCO) who had an inpatient hospital stay billed to Medicaid. When a capitation payment is made to an MCO, the hospital should, in most instances, bill the MCO and not Medicaid for the cost of that inpatient stay.
- **Nursing Home Residents with Home Health and Personal Care Billings:**  
Some Home Health and Personal Care agencies continue to bill Medicaid for services while a client is residing in a Skilled Nursing Facility (SNF). This match will identify any billings from these providers during the stay of the Medicaid recipient in the SNF.
- **Non-Affiliated Inpatient:**  
This match identifies hospital, clinic, and ambulatory surgery center type claims billed by providers other than the hospital where the patient is hospitalized. When someone other than the admitting hospital provides a service, that provider is required to bill the original admitting hospital for reimbursement and not Medicaid.
- **Managed Care Family Planning Chargeback:**  
Medicaid clients have the right to receive services for family planning outside their Managed Care Organization (MCO). The capitation payment to the MCOs includes costs associated with family planning. As part of the agreement between the State and the MCOs, DOH may recoup that portion of an MCO's rate which is associated with family planning if the client goes to a non-network MCO provider for the service. This match identifies those Managed Care recipients who receive family planning services outside of their MCO. Fee-for-service payments made to the non-network MCO providers are recovered from the MCO.
- **Duplicate Clinic Claim:**  
Diagnostic and Treatment Centers may bill only one clinic visit per recipient per day. This match identifies multiple clinic visits for the same recipient for the same date of service.

- **Ancillary Services/Same Day Clinic Visit:**  
This match identifies hospital based lab services, and hospital based ambulatory services other than lab, that were billed on the same day as a hospital based clinic visit.
- **Prenatal Care Assistance Program (PCAP):**  
DOH addresses multiple issues of erroneous billings for Medicaid clients who are receiving prenatal care services through PCAP. Billing issues surrounding the PCAP include clinic, physician, laboratory, and ordered ambulatory services for clients participating in the PCAP. The match includes multiple initial visits; post-partum services billed at initial or follow-up rates; PCAP service for inpatients; physician services; laboratory services and ordered ambulatory services billed as fee-for-service which are included in the PCAP rate.

**b. Office of Temporary and Disability Assistance FWARD Excluded Areas:**

Temporary Assistance for Needy Families (TANF) program is a block grant from the federal government that is administered at the State level. The portion of this grant that is administered by OTDA is either eligibility driven in the form of cash assistance or takes the form of block grants to LDSS. In the case of the cash assistance portion, these payments are carefully monitored through the Welfare Management System for accuracy. The block grants to LDSS have no corresponding State or local share. Since this is a block grant, there is no opportunity to increase federal funding and the strict edits in the Welfare Management System significantly restrict inappropriate State or local expenditures related to cash assistance.

**D. QUALIFICATIONS OF OFFERORS**

A qualified offeror must have:

- Demonstrated successful experience in performing health and human services program fraud, waste and abuse detection and recovery of overpayment services for federal, state or local governments for a minimum of three years;
- Demonstrated knowledge of successful existing and new methods, technologies, and strategies for fraud, waste and abuse detection and recovery; and
- Demonstrated information technology capability necessary to accomplish the FWARD project.

## **E. LETTER OF INTENT**

A Letter of Intent indicating the prospective offeror's interest in submitting a proposal is requested to be received in the Department no later than 5:00 p.m. on the date indicated in section H 2. Submission of the Letter of Intent is **not** a condition or prerequisite for submission of a proposal by a prospective offeror. The Letter of Intent should be addressed to the same address for submitting the proposal indicated in F 1. below.

## **F. PROPOSAL REQUIREMENTS**

### **1. Submission of Proposal**

**Six (6) signed copies (one original and five (5) copies)** of the response to this RFP must be **accompanied by a letter of transmittal** signed by an official of the entity authorized to bind the offeror to its provisions and stating that the response is valid for 180 calendar days from the offeror's submission. If the offeror is intending to use subcontractors, a subcontractor statement of commitment and willingness to participate **must** be submitted. However, the offeror remains responsible for the completion of all work.

The six signed copies of the proposal must be properly identified and sent or hand-delivered to:

Mr. Mark Bertozzi  
N.Y.S. Department of Health  
Bureau of Policy Development and Agency Relations  
One Commerce Plaza  
Room 720  
Albany, NY 12210  
Telephone (518) 474-8458

**PROPOSALS MUST BE RECEIVED BY DOH ON OR BEFORE THE CLOSE OF BUSINESS 5:00 P.M. ON JULY 22, 2005.** Any offeror's proposal made in response to this RFP not received by 5:00 P.M. on the closing date for receipt of proposals will be considered to be non-responsive and will not be accepted.

The offeror must allow sufficient time for mail delivery to ensure receipt of its proposal by the time specified and should utilize mail, United States Postal System (USPS) Federal Express (Fed Ex), etc. with return receipt requested.

The office building for hand-delivery is a secure location. Time must be allowed to pass security. Mr. Bertozzi should be telephoned on the day of the delivery to indicate the time of delivery.

The response to this RFP is contained in two proposals – Technical and Financial.

The Technical Proposal must be separated from the Financial Proposal, each in a separate envelope. Each envelope must be marked appropriately.

In addition, each proposal must include the following, in the order presented below:

**2. Technical Proposal (5 parts)**

Using Vendor Completion Forms in Appendix C, the offeror must submit a Technical Proposal made up of five parts (a. thru e.).

**a. Title of Project**

The title page of the RFP submission must be titled:

**Health and Human Services Fraud, Waste, Abuse, Recovery and Detection Project  
Request for Proposal**

**b. Statement of Understanding**

State in concise terms the offeror's understanding of the health and human services fraud, waste, abuse prevention and detection activities to be performed by the FWARD vendor and the role the vendor is expected to perform. **(using Statement of Understanding Form F 2.b.)**

**c. Organizational Description**

The offeror must provide:

1. A description of the offeror's organization, headquarters and branch office locations, parent and subsidiary organizations, and the relationship between the offeror's organization and any parent or subsidiary. The offeror must include the number of years the organization has been in the business of recovering health and human services fraud, waste, and abuse overpayments. Also, the offeror must describe data processing and analysis capabilities, and the ability of the organization to perform the FWARD project. **(using Organizational Description Form F 2.c.1)**
2. An organization chart showing the structure of the offeror's organization and specific areas of responsibility for all staff associated with this project. **(using Organization Chart Form F 2.c.2)**
3. The full name and address of any organization with which the offeror will



subcontract for any services provided in the FWARD project and the mechanisms for assuring its effective and efficient operations. List responsible officers of each subcontractor, including those individuals authorized to negotiate for the subcontractor. List any financial interest the offeror has in the proposed subcontractors. Evidence of a potential subcontractor's willingness to participate in FWARD and enter into subcontractual arrangements must be included. **(using Organization Subcontractors Form F 2.c.3.)**

**d. Offeror's Qualifications and Experience**

1. Describe in detail the offeror's prior health and human services fraud, waste and abuse detection and revenue recovery experience / projects. The experience / projects referenced should substantiate the offeror's qualifications and capabilities to perform the scope of FWARD work. Describe any technologies, special techniques, skills or abilities that the organization considers necessary to accomplish the FWARD project requirements. Describe the work experience and other relevant background of up to five key individuals who will be assigned to work under the contract resulting from this RFP, and provide references who can provide verification that may be contacted by the State.

The projects referenced in the descriptions above must be identified and the name of the customer shown, including the name, address and telephone number of the responsible official of the customer, company or agency who may be contacted by the State.

2. In addition, the offerer must provide the following information:

List the three largest (e.g. largest health and human services program, longest duration) projects the offeror has performed for a government organization similar to those required by the FWARD project. For each of these projects:

- Reference names and telephone numbers of the customer to contact for confirmation of the project performed by the offeror, its scope and the offeror's quality of work.
- Describe the project(s) and the project goals, summarize the project results, and describe the resources expended on the project. The offeror must include quantitative data, such as the claims reviewed and recovered savings.

**(using Qualifications and Experience Form F.2.d.)**

e. **Overall Scope of Work Narrative**

Describe how the offeror foresees accomplishing the scope of work in both Phase I and Phase II in regard to the following eight (8) specific tasks:  
**(using Overall Scope of Work Narrative Form F.2.e.)**

1. Evaluating the overall effectiveness of the current fraud, waste, and abuse detection and recovery activities, including pre and post payment reviews;
2. Evaluating the technologies currently used to avoid, detect and recover improper payments;
3. Developing new initiatives to detect and recover improper payments;
4. Estimating health care and human services program savings from new fraud, waste, abuse detection and recovery initiatives;
5. Estimating the cost of any recommended improvements and initiatives;
6. Validating the level of fraud, waste, abuse in the areas identified by the vendor for new detection and recovery initiatives;
7. Demonstrating the effectiveness of new fraud, waste, abuse detection and recovery technologies/methodologies proposed by the offeror; and,
8. Recovering overpayments identified by the offeror.

3. **Financial Proposal (1 Part)**

a. Financial Bid Form

Complete the **Financial Bid Form F 3.a.** in Appendix F and submit it only with your Financial Proposal, not with your Technical Proposal.

The Financial Proposal must contain **one maximum (“upset”) contingency fee** to be paid the vendor for all DOH and OTDA fraud, waste, abuse recoveries, as the percentage of net recoveries to the State and its localities, for each of the five (5) years of the FWARD Phase II contract and the five-year average percentage.

## **G. METHOD OF AWARD**

### **1. Vendor Selection**

This is a competitive procurement that will result in a contract to implement the FWARD project. At the sole discretion of the State, any and all proposals may be rejected.

### **2. Evaluation Committees**

The proposals will be evaluated by the Technical Evaluation Committee and Financial Evaluation Committee made up of State government staff experienced in fraud, waste and abuse detection and recovery, and contract management. Both Committees will independently recommend the proposal that best meets the requirements of the State to the Selection Committee.

### **3. Selection Committee**

The Selection Committee, comprised of State government managers, will select the vendor based on its review of the recommendation of the Technical Evaluation and Financial Evaluation committees.

### **4. Initial Compliance Evaluation**

All responses to the RFP will be subject to an Initial Compliance Evaluation. All responses that pass the Initial Compliance Evaluation will be submitted to both the Technical Evaluation Committee and the Financial Evaluation Committee. In completing the Compliance Evaluation, the Department has the right to request additional information.

The responses will be screened for the following items:

- a. Responsiveness to RFP – meets delivery due date, transmittal letter signed by an official, format and content requirement, as specified herein;
- b. Inclusion and completion of all forms and proposal components in their entirety, required by the RFP;
- c. The Technical Proposal with the five (5) parts and their components, as itemized in section F 2. (Items a. thru e.); and
- d. The Financial Proposal with one (1) part, as itemized in section F 3. a.

**Proposals determined to be non-responsive to the items above may be deemed to have failed the Initial Compliance Evaluation.**

## 5. Scoring of Proposals

The Technical Evaluation comprises 80% of the maximum total score and the Financial Evaluation comprises 20% of the maximum total score. Proposals that have passed the Initial Compliance Evaluation will receive a total possible score ranging from a Low of 0 to a High of 100 points.

- a. The Technical Evaluation maximum score of 80 will be awarded to the offeror that is determined to be best able to successfully perform both FWARD Phase I and II, by evaluation of the following criteria:

1. Offerors Qualifications and Experience (section F.2.d)  
Low Score 0, High score 60
2. Overall Scope of Work Narrative (section F 2. e.)  
Low score 0, High score of 20

For example, the score of the five highest ranking Technical Proposals would be calculated as follows:

Technical Proposal Ranking	Technical Evaluation Points	% of Other Scores to Highest Score	% of Other Scores to Highest Score Times 80	Final Score
Highest score	70	N/A	N/A	<b>80.0</b>
Second highest score	65	65/70 = 93%	.93 x 80 = 74.0	<b>74.3</b>
Third highest score	60	60/70 = 86%	.86 x 80 = 68.6	<b>68.6</b>
Fourth highest score	55	55/70 = 79%	.60 x 80 = 62.9	<b>62.9</b>
Fifth highest score	50	50/70 = 71%	.50 x 80 = 57.1	<b>57.1</b>

- b. The Financial Evaluation maximum score of 20 will be awarded to the offeror with the lowest five-year average annual maximum contingency fee proposed – as a percentage paid the vendor of the net recovery of health and human services program overpayments to the State and localities for any area of recovery -- for each of the five (5) years of FWARD Phase II.

Scores ranging from 0 up to 20 will be awarded to other offerors by calculating the percentage that the lowest contingency fee proposed is of the other offeror's contingency fee proposed, and then multiplying that percentage times the Maximum Score of 20.

For example, the score of the five lowest Financial Proposals would be calculated as follows:

Financial Proposal Ranking	5 Year Phase II Average %	% of Lowest Proposal to Other Proposals	% of Lowest Proposal to Other Proposals Times 20	Score
Lowest bid	6	N/A	N/A	<b>20.0</b>
Second lowest bid	8	6/8 = 75%	.75 x 20 = 15.0	<b>15.0</b>
Third lowest bid	9	6/9 = 66%	.66 x 20 = 13.2	<b>13.2</b>
Fourth lowest bid	10	6/10 = 60%	.60 x 20 = 12.0	<b>12.0</b>
Fifth lowest bid	12	6/12 = 50%	.50 x 20 = 10.0	<b>10.0</b>

- c. **The vendor with the highest total combined Technical Proposal score and Financial Proposal score will be selected.** There is a maximum achievable total score of 100 (Technical Proposal score 80 plus Financial Proposal score 20). Vendors will be ranked from high to low based on their total Technical Proposal and Financial Proposal score.
- d. **The vendor with the highest total combined Technical Proposal score and Financial Proposal score will be selected.** There is a maximum achievable total score of 100 (Technical Proposal score 80 plus Financial Proposal score 20). Vendors will be ranked from high to low based on their total Technical Proposal and Financial Proposal score.

## 6. **Notification of Award**

After evaluation and selection of the vendor, all offerors will be notified in writing of the acceptance or rejection of their proposals. The name of the successful offeror may be disclosed. Press releases pertaining to this project shall not be made without prior written approval by the State and then only in conjunction with the issuing office.

**The State reserves the right to reject any and all offers. The State also reserves the right to eliminate any mandatory requirements unmet by all offerors.**

In the event of a contract award, all products and other documentation produced as part of the contract will become the exclusive property of New York State. The State reserves the right to royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to do so. This includes all products and documentation.

## 7. **Confidentiality of Data**

The vendor is responsible for the confidentiality and integrity of any data observed or obtained during this contract. All reasonable steps must be taken to protect this data. Any incident of breach of confidentiality shall be cause for

immediate termination of the contract.

## H. ADMINISTRATIVE

### 1. Issuing Agency

This RFP is issued by the New York State Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

### 2. Time Table

#### Date

Release RFP	May 23, 2005
Final Date Letters of Intent Due	June 10, 2005
Final Date Questions Due	June 17, 2005
Department Posts Responses to Questions on DOH Website	July 1, 2005
<b>FINAL DATE TO SUBMIT PROPOSAL</b>	<b>July 22, 2005</b>
Award/Notification	September 23, 2005
Commencement of Contract Performance	January 9, 2006

### 3. Inquiries

Any questions concerning this RFP should be directed to:

Mr. Mark Bertozzi  
N.Y.S. Department of Health  
Bureau of Policy Development and Agency Relations  
One Commerce Plaza  
Room 720  
Albany, NY 12210  
Telephone (518) 474-8458  
Telefax (518) 473-5884

All questions and response will be posted on the DOH website  
([www.health.state.ny.us](http://www.health.state.ny.us)).

### 4. Submission of Proposals

Interested offerors must submit an original and five signed copies of their proposal in response to this RFP not later than 5.00 p.m. on **July 22, 2005** at which time, the proposals will be publicly opened in Room 720, One Commerce Plaza, Albany, NY 12210.

The technical and financial responses to the RFP should be returned in two

separate envelopes (no financial information should be included in the technical proposal) clearly marked:

**Health and Human Services Fraud, Waste, Abuse, Recovery and Detection Project RFP**, and directed to:

Mr. Mark Bertozzi  
N.Y.S. Department of Health  
Bureau of Policy Development and Agency Relations  
One Commerce Plaza  
Room 720  
Albany, NY 12210

It is the offeror's responsibility to see that proposals are delivered to Room 720 prior to the date and time of the proposal opening. Late proposals due to delay by the carrier or not received in DOH's mail room in time for transmission to Room 720 will not be considered.

All evidence and documentation requested under section F of the RFP must be provided at the time the proposal is submitted.

**Requirements for Disclosure of Contacts**

New York State Executive Order #127 (EO127) was recently enacted which provides for increased disclosure in the public procurement process. The new process requires identification of all contacts from businesses and their representatives relative to procurement contracts. See **Attachment 2** for a copy of the order and applicable forms.

In general, the Executive Order requirements include:

- a. Potential bidders and selected contractors must disclose to the State all persons retained, employed or designated by or on behalf any bidder to attempt to influence the procurement process, and whether that person has a financial interest in the procurement.
- b. A record be made by the State of any individuals, other than those listed by potential bidders and selected contractors, who attempt to influence the process.
- c. A determination of vendor responsibility must be made as a part of the selection decision, including consideration of a failure to comply with the requirements of Executive Order 127.
- d. Any finding that a contractor did not disclose complete information or did not cooperate completely with implementation of the order shall be considered in the vendor responsibility determination.
- e. All procurement contracts include language certifying that the vendor has disclosed all parties retained, employed or designated by or on behalf of the vendor to influence the procurement process.

- f. All procurement contracts contain language allowing termination of the contract if the certification is found to be intentionally false or intentionally incomplete.
- g. Any member, officer or employee of a covered state entity who fails to comply with the executive order shall be subject to appropriate disciplinary action.

In light of this new executive order, each bidder and subcontractor MUST fill out and submit a "Contractor Disclosure of Prior Non-Responsibility Determinations" form with their bid for this procurement.

In addition, a "Contractor Disclosure of Contacts" form must be filled out for each person who has been designated by the bidder to contact the State for the purpose of participating in the FWARD procurement. **This includes ALL references included in the proposal, as well as any lobbyists, attorneys or other representatives who might seek to contact NYS government concerning this RFP.**

Failure to complete and submit the forms with the proposal will result in a determination of non-responsiveness, and the bid will be disqualified. See Attachment 2 for copies of required forms.

5. **The State reserves the right to:**

- a. Reject any or all proposals received in response to this RFP;
- b. Waive or modify minor irregularities in proposals received after prior notification to the offeror;
- c. Correct computational errors with the written concurrence of the offeror;
- d. Negotiate with vendors responding to this RFP within the requirements to serve the best interests of the State;
- e. Modify the detail specifications should no proposals be received that meet all these requirements; and
- f. If the State is unsuccessful in negotiating a contract with the selected vendor within an acceptable time frame, the State may begin contract negotiations with the next qualified vendor(s) in order to serve and realize the best interests of the State.
- g. Eliminate any requirement(s) unmet by all offerors upon notice to all parties submitting Letters of Intent or bid proposals.
- h. Issue a modified version of this RFP. Note: Any such modification issued



on or before the due date for proposals shall go to all parties receiving a copy of this RFP; after that due date (or amended date), notification will be only to offerors who have submitted proposals or Letters of Intent. Please note that the State's right to issue modifications, etc. permits any addition or deletion deemed appropriate by DOH/OTDA.

- i. Direct any offeror or number of offerors to submit proposal modifications addressing subsequent RFP amendments.

## **6. Payment**

Contractor shall submit invoices to the State's designated payment office:

Medicaid Fraud Control and Program Integrity  
NYS Department of Health  
Riverview Center  
150 Broadway, 4<sup>th</sup> Floor  
Menands, NY 12204

Payment of such invoices by the State (New York State Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

## **7. Term of Contract**

The FWARD contract will be for a five (5) year period. This agreement shall be effective upon approval of the New York State Office of the State Comptroller.

This agreement may be canceled at any time by the New York State Department of Health giving to the contractor not less than thirty (30) calendar days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

## **I. APPENDICES FOR CONTRACTS**

The following will be incorporated as appendices into any contracts resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX B - Request for Proposal
- APPENDIX C – Vendor Completion Forms
  - Statement of Understanding (F 2. b.)
  - Organizational Description (F 2. c. 1.)
  - Organization Chart (F 2. c. 2.)
  - Organization Subcontractors (F 2. c. 3.)
  - Qualifications and Experience (F 2. d.)
  - Overall Scope of Work Narrative (F 2. e.)
  - Financial Proposal Bid (F 3. a.)
- APPENDIX D - General Specifications
- APPENDIX E - Contractor Proof (Insurance)  
Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:

Certificate of Workers' Compensation Insurance, on the Workers' Compensation Board form C-105.2 or the State Insurance Fund Form U-26.3 (naming the New York State Department of Health, Corning Tower Rm. 1315, Albany 12237-0016), or

Affidavit Certifying That Compensation Has Been Secured, form SI-12 or GSI-105.21, or

Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form WC/DB-100 or WC/DB-101, completed for workers' compensation; and

Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

Certificate of Insurance, form DB-120.1, or

Notice of Qualification as Self Insurer Under Disability Benefits Law,  
form DB-155, or

Statement That Applicant Does Not Require Workers' Compensation  
or Disability Benefits Coverage, form WC/DB-100 or WC/DB-101,  
completed for disability benefits insurance.

- APPENDIX H - Federal Health Insurance Portability and Accountability  
Act ("HIPAA") Business Associate Agreement ("Agreement")

## **APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its

subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence

directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real

property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be

heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development

30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

September, 2004

APPENDIX D  
GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:

All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work, or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. Non-Collusive Bidding  
By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
- a. The prices of this bid have been arrived at independently without collusion, consultation,

communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Work for Hire Contract  
Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification -- The following provisions apply if this Request for Proposal



(RFP) seeks proposals for "Technology"

1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
4. The responses to this RFP must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

N. YEAR 2000 WARRANTY

1. Definitions

For purposes of this warranty, the following definitions shall apply:

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- d. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Warranty Disclosure

At the time of bid, Product order or Product quote, Vendor is required to disclose the following information in writing to Authorized User:

- a. For Vendor Product and for Products (including, but not limited to, Vendor and/or Third

Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and

- b. For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement.

An absence or failure to furnish the required written warranty disclosure shall be deemed a statement of compliance of the product(s) or system(s) in question with the year 2000 warranty statement set forth below.

### 3. Warranty Statement

Year 2000 warranty compliance shall be defined in accordance with the following warranty statement:

Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to Products as a system.

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

This warranty shall survive beyond termination or expiration of the Agreement.

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

- O. No Subcontracting  
Subcontracting by the contractor shall not be permitted except by prior written approval and knowledge of the Department of Health.
- P. Superintendence by Contractor  
The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment  
If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the

authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

R. Experience Requirements

The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.

S. Contract Amendments

This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. The services to be performed by the Contractor shall be at all times subject to the direction and control of the Department as to all matters arising in connection with or relating to this Agreement.
2. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor.
3. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Termination Provision

Upon termination of this agreement, the following shall occur:

- ☐ Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
- ☐ Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing

materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

Except as otherwise provided for in the contract, any dispute which is not disposed of by contract shall be submitted in writing to and decided by the Commissioners of Health and Office of Temporary and Disability Assistance (Commissioner) or their duly authorized representative(s) or designee(s).

If the contractor is unwilling to accept the decision of the Commissioners or a decision is not made in ninety (90) days, it may then pursue its normal legal remedies de nova, but it is specifically agreed that any and all reports made by the Commissioners upon the disagreement at issue shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the contract by the commissioners shall govern operation thereunder and the contractor shall continue to perform under the contract.

The contractor shall be required to bring all legal proceedings relating to this contract against the Department of Health, Office of Temporary and Disability Assistance or the State of New York in the Courts of the State of New York.

W. **MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT**

The New York State Department of Health recognizes the need to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department of Health's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

To implement this affirmative action policy statement, the contractor agrees to file with the Department of Health within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing plan shall be supplied by the Department.

After an award of this contract, the contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Department.

X. **Contract Insurance Requirements**

- a. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations

under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

1. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
2. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
  - a. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
  - b. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
  - c. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995),

and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1) APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

**Instructions for Certification**

- a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
- h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is

normally possessed by a prudent person in the ordinary course of business dealings.

- i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 2) *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions*
- a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
  - b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## Z. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this

AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.

5. The CONTRACTOR , its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
  1. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and
  2. that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provisions Related to New York State Executive Order Number 127

1. The CONTRACTOR certifies that all information provided to the STATE with respect to New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, is complete, true, and accurate.
2. The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR, in accordance with New York State Executive Order Number 127, was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.



**Appendix H**  
**Federal Health Insurance Portability and Accountability Act ("HIPAA")**  
**Business Associate Agreement ("Agreement")**

**I. Definitions:**

- (a) A Business Associate shall mean the CONTRACTOR.
- (b) A Covered Program shall mean the STATE.
- (c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, including those at 45 CFR Parts 160 and 164.

**II. Obligations and Activities of the Business Associate:**

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that it creates receives, maintains or transmits on behalf of the Covered Entity pursuant to this Agreement.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) The Business Associate agrees to report to the Covered Program, any use or disclosure of the Protected Health Information not provided for by this Agreement, as soon as reasonably practicable of which it becomes aware. The Business Associate also agrees to report to the Covered Entity any security incident of which it becomes aware.
- (e) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Program agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.
- (f) The Business Associate agrees to provide access, at the request of the Covered Program, and in the time and manner designated by the Covered Program, to Protected Health Information in a Designated Record Set, to the Covered Program or, as directed by the Covered Program, to an Individual in order to meet the requirements under 45 CFR 164.524, if the business associate has protected health information in a designated record set.
- (g) The Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Program directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Program or an Individual, and in the time and manner designated by Covered Program, if the business associate has protected health information in a designated record set.
- (h) The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Program available to the Covered Program,

or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Program or the Secretary, for purposes of the Secretary determining the Covered Program's compliance with the Privacy Rule.

- (i) The Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) The Business Associate agrees to provide to the Covered Program or an Individual, in a time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

### III. Permitted Uses and Disclosures by Business Associate

#### (a) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Program as specified in the Agreement to which this is an addendum, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Program.

#### (b) Specific Use and Disclosure Provisions:

- (1) Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Except as otherwise limited in this Agreement, the Business Associate may use Protected Health Information for the proper management and administration of the business associate or to carry out its legal responsibilities and to provide Data Aggregation services to Covered Program as permitted by 45 CFR 164.504(e)(2)(i)(B). Data Aggregation includes the combining of protected information created or received by a Business Associate through its activities under this contract with other information gained from other sources.
- (3) The Business Associate may use Protected Health Information to report violations of law to appropriate federal and State authorities, consistent with 45 CFR 164.502(j)(1).

### IV. Obligations of Covered Program

Provisions for the Covered Program To Inform the Business Associate of Privacy Practices and Restrictions

- (a) The Covered Program shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR 164.520, to the extent that

such limitation may affect the Business Associate's use or disclosure of Protected Health Information.

- (b) The Covered Program shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.
- (c) The Covered Program shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Program has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Program

The Covered Program shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Program, except if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

VI. Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective during the dates noted on page one of this agreement, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in the Agreement.
- (b) *Termination for Cause.* Upon the Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for the Business Associate to cure the breach and end the violation or may terminate this Agreement and the master Agreement if the Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or the Covered Program may immediately terminate this Agreement and the master Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.
- (c) *Effect of Termination.*
  - (1) Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Program, or created or received by the Business Associate on behalf of the Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.
  - (2) In the event that the Business Associate determines that returning or destroying the Protected Health Information is not possible, the Business Associate shall provide to the Covered Program notification of the conditions that make return or destruction not possible. Upon mutual agreement of the Parties that return or destruction of Protected

Health Information is not possible, the Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not possible, for so long as Business Associate maintains such Protected Health Information.

## VII. Violations

- (a) It is further agreed that any violation of this agreement may cause irreparable harm to the State, therefore the State may seek any other remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- (b) The Business Associate shall indemnify and hold the State harmless against all claims and costs resulting from acts/omissions of the Business Associate in connection with the Business Associate's obligations under this Agreement.

## VIII. Miscellaneous

- (a) *Regulatory References.* A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of the Business Associate under Section VI of this Agreement shall survive the termination of this Agreement.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Program to comply with the HIPAA Privacy Rule.
- (e) If anything in this agreement conflicts with a provision of any other agreement on this matter, this Agreement is controlling.
- (f) *HIV/AIDS.* If HIV/AIDS information is to be disclosed under this Agreement, the Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

Name\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

Name\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

## **ATTACHMENT 1**

### **Appendix C – Vendor Completion Forms**

- Statement of Understanding (F 2. b.)
- Organizational Description (F 2. c. 1.)
- Organization Chart (F 2. c. 2.)
- Organization Subcontractors (F 2. c. 3.)
- Qualifications and Experience (F 2. d.)
- Overall Scope of Work Narrative (F 2. e.)
- Financial Proposal Bid (F 3. a.)

**STATEMENT OF UNDERSTANDING**  
**(Form F 2. b.)**

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

State in concise terms the offeror's understanding of the health and human services fraud, waste, abuse prevention and detection activities to be performed by the FWARD vendor and the role the vendor is expected to perform, as described in the RFP:

[illegible]

**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**ORGANIZATIONAL DESCRIPTION  
(Form F 2. c. 1.)**

**Offeror:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**State:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

*Offerors must add additional pages as necessary to complete the form.*

1. Describe the offeror's organization, headquarters and branch office locations, parent and subsidiary organizations:

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2. Describe the relationship between the offeror's organization and any parent or subsidiary:

Name of Parent Organization: \_\_\_\_\_

Relationship to Offeror:

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3. Provide the number of years the organization has been in the business of recovering health and human services fraud, waste, and abuse overpayments on behalf of states and/or local governments:

Types of Projects:

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Total Number of Years:

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**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**ORGANIZATION CHART FORM  
(F 2. c. 2.)**

**Offeror:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**State:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

*Offerors must add additional pages as necessary to complete the form.*

Provide an organization chart showing the structure of the offeror's organization and specific areas of responsibility for all staff associated with this project:



**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**ORGANIZATION SUBCONTRACTORS  
(Form F 2. c. 3.)**

**Offeror:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**State:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

*Offerors must add additional pages as necessary to complete the form.*

The offeror must indicate ( **X** ) whether or not they intend to use subcontractors: YES\_\_\_\_ NO\_\_\_\_

**If "YES" is indicated, the offeror must provide the following information.**

1. Provide the full name and address of any organization with which the offeror will subcontract for any services provided in the FWARD project and the mechanisms for assuring its effective and efficient operations:

Subcontractor: \_\_\_\_\_

Subcontractor Address: \_\_\_\_\_

Work to be Performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mechanism for Assuring Effective and Efficient Operations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. List responsible officers of each subcontractor, including those individuals authorized to negotiate for the subcontractor:

Subcontractor: \_\_\_\_\_

Responsible Officers: \_\_\_\_\_

3. List any financial interest the offeror has in the proposed subcontractors:

\_\_\_\_\_  
\_\_\_\_\_

*Continue Form F 2. c. 3. on next page*

**ORGANIZATION SUBCONTRACTORS (Form F 2. c. 3.)**  
**Page 2**

4. Provide evidence of a potential subcontractor's willingness to participate in FWARD and enter into subcontractual arrangements:

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**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**QUALIFICATIONS AND EXPERIENCE  
(Form F 2. d.)**

**Offeror:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**State:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

*Offerors must add additional pages as necessary to complete the form.*

1. Describe in detail the offeror's prior health and human services fraud, waste and abuse detection and revenue recovery experience / projects and ability to perform the FWARD project. (The experience described should substantiate the offeror's qualifications and capabilities to perform the scope of FWARD work.)

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The revenue recovery experience / projects referenced above must be identified with the name of the customer indicated, and the name, address and telephone number of the responsible official of the customer, company or agency who may be contacted by the State:

Project: \_\_\_\_\_

Customer: \_\_\_\_\_

Name of Responsible Official: \_\_\_\_\_

Address: \_\_\_\_\_ Phone#: \_\_\_\_\_

2. Describe any technologies, special techniques, skills or abilities that the organization considers necessary to accomplish the FWARD project requirements:

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3. Describe the work experience and other relevant background of up to five (5) key individuals who will be assigned to work under the contract resulting from this RFP:

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*Continue Form F 2. d. on next page*

**QUALIFICATIONS AND EXPERIENCE (Form F 2. d.)**  
**Page 2**

4. Provide the names, addresses and phone numbers of references that may be contacted by the State to verify the work experience and other relevant background of the key individuals cited above in # 3.

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5. List the three largest (e.g. largest health and human services program, longest duration) projects the offeror has performed for a government organization similar to those required by the FWARD project. For each of these projects:

- Reference names and telephone numbers of the government organization customer to contact for confirmation of the project performed by the offeror, its scope and the offeror's quality of work; and
- Describe the project(s) and the project goals, summarize the project results, and describe the resources expended on the project. The offeror must include quantitative data, such as claims reviewed and recovered savings.

Government Organization: \_\_\_\_\_

Years Served: \_\_\_\_\_

Name of Customer Reference: \_\_\_\_\_ Phone #: \_\_\_\_\_

Project Description: \_\_\_\_\_

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Government Organization: \_\_\_\_\_

Years Served: \_\_\_\_\_

Name of Customer Reference: \_\_\_\_\_ Phone #: \_\_\_\_\_

Project Description: \_\_\_\_\_

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Government Organization: \_\_\_\_\_

Years Served: \_\_\_\_\_

Name of Customer Reference: \_\_\_\_\_ Phone #: \_\_\_\_\_

Project Description: \_\_\_\_\_

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**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**OVERALL SCOPE OF WORK NARRATIVE  
(Form F 2. e.)**

**Offeror:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**State:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

*Offerors must add additional pages as necessary to complete the form.*

I. Describe how the offeror foresees accomplishing the scope of work in FWARD Phase I and Phase II in regard to the following eight (8) specific tasks):

1. Evaluating the overall effectiveness of the current, fraud, waste, and abuse detection and recovery activities, including pre and post payment reviews:

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2. Evaluating the technologies currently used to avoid, detect and recover improper payments. In answering, the offeror must describe the organization's data processing and analysis capabilities:

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3. Developing new initiatives to detect and recover improper payments:

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4. Estimating health care and human services program savings from new fraud, waste, abuse detection and recovery initiatives:

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5. Estimating the cost of any recommended improvements and initiatives:

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Continue Form F 2. e. on next page

**OVERALL SCOPE OF WORK NARRATIVE (Form F 2. e.)**

**Page 2**

6. Validating the level of fraud, waste, abuse in the areas identified by the vendor for new detection and recovery initiatives:

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7. Demonstrating the effectiveness of new fraud, waste, abuse detection and recovery technologies/methodologies proposed by the vendor:

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8. Recovering overpayments identified by the vendor:

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**A Request for Proposal for  
Health and Human Services  
Fraud, Waste, Abuse, Recovery and Detection Project**

**FINANCIAL PROPOSAL BID  
(Form F 3. a.)**

**Offeror:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**State:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

Provide the **maximum** percentage (contingency fee) of the net recoveries of health and human services program overpayments to the State and localities for any area of recovery to be paid the vendor – for each of the five (5) years of FWARD Phase II, and the five-year average percentage:

**Year 1:** \_\_\_\_\_ %

**Year 2:** \_\_\_\_\_ %

**Year 3:** \_\_\_\_\_ %

**Year 4:** \_\_\_\_\_ %

**Year 5:** \_\_\_\_\_ %

**Five year average** \_\_\_\_\_ % [(Years 1+2+3+4+5) / 5]

**No. 127**  
**EXECUTIVE ORDER**

**PROVIDING FOR ADDITIONAL STATE PROCUREMENT DISCLOSURE**

WHEREAS, the State of New York and its public authorities have an obligation to carry out their responsibilities in the most efficient and effective manner possible;

WHEREAS, over the past eight and one-half years, we have made tremendous progress in streamlining and improving state government;

WHEREAS, the State of New York and its public authorities enter into numerous procurement contracts and real estate transactions which involve substantial sums of public moneys;

WHEREAS, while the State Legislature has enacted strong laws to regulate the procurement process and maintain its integrity (Procurement Stewardship Act, Chapter 83 of the Laws of 1995) and to regulate persons who appear before state government on certain matters (Lobby Law, Chapter 2 of the Laws of 1999), more can be done to maintain continued public confidence in the State's procurement process; and

WHEREAS, increased disclosure regarding persons and organizations contacting state government regarding procurement and real estate transactions would enhance public confidence in the procurement process.

NOW, THEREFORE, I, George E. Pataki, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

**I. Definitions**

1. "Covered agency or authority" shall mean any State department, office or division, or any board, commission or bureau thereof, and any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor, and shall include the State University of New York and the City University of New York.
2. "Procurement contract" shall mean any contract or agreement, or subsequent amendment thereto, involving an estimated annualized expenditure in excess of fifteen thousand dollars for:
  - (i) the purchase of goods or services;
  - (ii) the purchase, sale, lease, acquisition or granting of other interests in real property; and
  - (iii) public works. The term "procurement contract" shall not include a contract that, by law, must be awarded to the lowest responsible bidder, or a contract that, by law, must be awarded on the basis of lowest price subsequent to a competitive bid process.
3. "Proposal" shall mean any proposal, quotation, bid, offer or response to a covered agency or authority's solicitation of submissions in expectation of an award of a procurement contract.
4. "Attempt to influence the procurement process" shall mean any attempt to influence any determination of a member, officer or employee of a covered agency or authority by a person other than a member, officer or employee of a covered agency or authority with respect to:
  - (a) the solicitation, evaluation or award of a procurement contract; or
  - (b) the preparation of specifications or request for submissions of proposals for a procurement contract.
5. "Contractor" shall mean bidder, offeror or proposer for a procurement contract and shall include any subcontractor who may be engaged in the delivery of goods, services or construction pursuant to the procurement contract.
6. "Financial interest in the procurement" shall mean:



- (a) owning or exercising direct or indirect control over, or owning a financial interest of more than one percent in, a contractor or other entity that stands to gain or benefit financially from the award of a procurement contract;
- (b) receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract;
- (c) being compensated by, or being a member of, an entity or organization which is receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract;
- (d) receiving, expecting or attempting to receive any other financial gain or benefit as a result of the procurement contract;
- (e) being a relative of a person with a financial interest in the procurement, as set forth in paragraphs (a) through (d) of this subdivision. For purposes of this paragraph, "relative" shall mean spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in paragraphs (a) through (d) of this subdivision or of the individual's spouse.

## II. Agency and Authority Responsibilities

1. Every covered agency and authority shall ensure that bid or proposal documents for procurement contracts include the name, address, telephone number, place of principal employment and occupation of every person or organization retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement.
2. Every covered agency and authority shall ensure that bid or proposal documents for procurement contracts shall include the name, address, telephone number, place of principal employment and occupation of every person or organization subsequently retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement. Every covered agency and authority shall ensure that contractors shall inform the agency or authority of the identity of any such persons or organizations prior to such person or organization contacting a covered agency or authority.
3. Prior to making an award of a procurement contract, each covered agency or authority shall make a determination of responsibility of the proposed awardee. Every covered agency and authority shall ensure that bid or proposal documents for procurement contracts shall require bidders, offerors or proposers to disclose findings of non-responsibility made within the previous five years by any covered agency or authority where such prior finding of non-responsibility was due to intentional provision of false or incomplete information to a covered agency or authority with respect to this Order. In making a determination of responsibility, covered agencies and authorities shall take into account any such prior finding and shall not award a contract to such bidder, offeror or proposer unless the covered agency or authority finds that the procurement contract would be in the best interests of the State notwithstanding the prior finding of non-responsibility, and such agency or authority shall include in its procurement record a statement describing its basis for such determination.
4. Every covered agency and authority shall ensure that any contacts that reasonably appear to be an attempt to influence the procurement process by persons and organizations other than those identified in bid or proposal documents or supplemental bid or proposal documents shall be recorded by the agency. Upon any such contact, the covered agency or authority shall obtain the same information required in bid or proposal documents pursuant to subdivisions 1 and 2 of this Part and inquire, determine and record whether the person or organization making such contact was retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement.
5. Every covered agency and authority shall, for each procurement contract, maintain a written record of all persons and organizations identified in subdivisions 1, 2 and 4 of this Part. Such record shall be open to inspection by the public.
6. The failure of a contractor to timely disclose accurate and complete information or to otherwise cooperate with a covered agency or authority in the implementation of this Order shall be considered by such agency or authority in its determination of the responsibility of such contractor, and no procurement contract shall be awarded to any such contractor unless the procurement record contains a written determination by such agency or authority that the contract award would be in the best interests of the State notwithstanding the failure of the contractor to provide such information or to otherwise cooperate.
7. Every procurement contract made subject to this Order shall contain a certification by the awardee that all information provided to the soliciting agency or authority with respect to this Order is complete, true and accurate and each such procurement contract

shall contain a provision authorizing the covered agency or authority to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete.

### III. Remedial Action; Guidance; Applicability

1. Any member, officer or employee of a covered agency or authority who fails to comply with the provisions of this Order shall be subject to appropriate disciplinary action by such agency or authority. In addition, where such conduct violates the Public Officers Law, such matter shall be referred to the State Inspector General and the State Ethics Commission, as may be appropriate.
2. Within 45 days of this Order, the Office of General Services shall issue written guidance to covered agencies and authorities regarding the implementation of this Order. Such guidance shall be deemed to be incorporated in this Order to the extent not inconsistent herewith.
3. The provisions of this Order shall be applicable to procurement contracts with respect to which a solicitation for bids, offers or proposals is made 60 days or more after this Order has taken effect.
4. Nothing in this Order shall be deemed to allow contacts or communications regarding a procurement contract where otherwise prohibited by law, rule, regulation or agency or authority policy.
5. Nothing in this Order shall affect the requirement that members, officers and employees of covered agencies and authorities to report allegations of impropriety involving procurement contracts to appropriate agency personnel, the agency or authority Inspector General, if applicable, and the State Inspector General and the State Ethics Commission, as appropriate.

G I V E N under my hand and the Privy Seal of the State

in the City of Albany this sixteenth day of June in the year two thousand three.  
BY THE GOVERNOR /s/ George E. Pataki

# Executive Order 127

## *Mandatory Vendor Disclosure Requirements*

In June 2003, Governor Pataki signed Executive Order 127 (EO 127) providing for additional disclosure in the State's procurement process.

### **In general, EO127 requires that:**

- potential bidders and selected contractors disclose to the procuring agency all persons retained, employed or designated by or on behalf of any bidder to attempt to influence the procurement process, and whether that person has a financial interest in the procurement (Contractor Disclosure of Contacts form);
- a determination of vendor responsibility must be made by the procuring agency as a part of the selection decision, including consideration of a failure to comply with the requirements of EO 127 (Contractor Disclosure of Prior Non-Responsibility Determinations form);
- all procurement contracts include language certifying that the vendor has disclosed all parties retained, employed or designated by or on behalf of the vendor to influence the procurement process; and all procurement contracts contain language allowing termination of the contract if the certification is found to be intentionally false or intentionally incomplete.

### **What does this mean for bidders?**

All bidders **must** include the two EO127 Contractor Disclosure forms with their bid proposal. Bidders must complete a Contractor Disclosure of Contacts form for each individual entity they have retained, employed or designated to attempt to influence the procurement process. Bidders must also complete and provide the Contractor Disclosure of Prior Non-Responsibility Determinations form. **Failure to provide either of these forms with the bid proposal could result in disqualification from the bid competition.**

**Executive Order #127**  
**CONTRACTOR DISCLOSURE OF CONTACTS**

This form shall be completed and submitted with your bid/proposal or offer. Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

NAME OF PROCUREMENT: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

NAME OF PERSON SUBMITTING THIS FORM: \_\_\_\_\_

TITLE: \_\_\_\_\_

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127?

☐ INITIAL FILING ☐ UPDATED FILING

The following person or organization was retained, employed or designated by or on behalf of the Contractor to attempt to influence the procurement process:

NAME: \_\_\_\_\_

ADDRESS: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

PLACE OF PRINCIPAL EMPLOYMENT: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

Does the above named person or organization have a financial interest in the procurement?

☐ YES ☐ NO**DEFINITIONS:*****"Financial Interest in procurement" shall mean:***

- (a) owning or exercising direct or indirect control over, or owning a financial interest of more than one percent in, a contractor or other entity that stands to gain or benefit financially from the award of a procurement contract; or
- (b) receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract; or
- (c) being compensated by, or being a member of, an entity or organization which is receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract; or
- (d) receiving, expecting or attempting to receive any other financial gain or benefit as a result of the procurement contract; or
- (e) being a relative of a person with a financial interest in the procurement, as set forth in paragraphs (a) through (d) above. For purposes of this paragraph, "relative" shall mean spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in paragraphs (a) through (d) above or of the individual's spouse.

**Executive Order #127****CONTRACTOR DISCLOSURE  
OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

NAME OF PERSON SUBMITTING THIS FORM: \_\_\_\_\_

TITLE: \_\_\_\_\_

Has any covered agency or authority made a finding of non-responsibility regarding the Contractor in the last five years?

☐ YES☐ NO**If Yes,** was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order Number 127?☐ YES☐ NO**If Yes,** please provide details regarding the finding of non-responsibility below:

COVERED AGENCY OR AUTHORITY: \_\_\_\_\_

YEAR OF FINDING OF NON-RESPONSIBILITY: \_\_\_\_\_

BASIS OF FINDING OF NON-RESPONSIBILITY: \_\_\_\_\_

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**STATE OF NEW YORK**  
**OFFICE OF THE STATE COMPTROLLER**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**

<b>1. VENDOR IS:</b> <input type="checkbox"/> <b>PRIME CONTRACTOR</b> <input type="checkbox"/> <b>SUB-CONTRACTOR</b>			
<b>2. VENDOR'S LEGAL BUSINESS NAME</b>		<b>3. IDENTIFICATION NUMBERS</b> a) <b>FEIN #</b>  b) <b>DUNS #</b>	
<b>4. D/B/A – Doing Business As</b> (if applicable) & <b>COUNTY FILED:</b>		<b>5. WEBSITE ADDRESS</b> (if applicable)	
<b>6. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE</b>		<b>7. TELEPHONE NUMBER</b>	<b>8. FAX NUMBER</b>
<b>9. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE</b> <i>IN NEW YORK STATE</i> , if different from above		<b>10. TELEPHONE NUMBER</b>	<b>11. FAX NUMBER</b>
<b>12. PRIMARY PLACE OF BUSINESS IN NEW YORK STATE IS:</b>  <input type="checkbox"/> <b>Owned</b> <input type="checkbox"/> <b>Rented</b>  If rented, please provide landlord's name, address, and telephone number below:		<b>13. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE</b>  Name Title Telephone Number Fax Number e-mail	
<b>14. VENDOR'S BUSINESS ENTITY IS</b> (please check appropriate box and provide additional information):			
a) <input type="checkbox"/> <b>Business Corporation</b>	<b>Date of Incorporation</b>	<b>State of Incorporation*</b>	
b) <input type="checkbox"/> <b>Sole Proprietor</b>	<b>Date Established</b>		
c) <input type="checkbox"/> <b>General Partnership</b>	<b>Date Established</b>		
d) <input type="checkbox"/> <b>Not-for-Profit Corporation</b>	<b>Date of Incorporation</b>	<b>State of Incorporation*</b> <b>Charities Registration Number</b>	
e) <input type="checkbox"/> <b>Limited Liability Company (LLC)</b>	<b>Date Established</b>		
f) <input type="checkbox"/> <b>Limited Liability Partnership</b>	<b>Date Established</b>		
g) <input type="checkbox"/> <b>Other – Specify:</b>	<b>Date Established</b>	<b>Jurisdiction Filed (if applicable)</b>	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York.			
<b>15. PRIMARY BUSINESS ACTIVITY</b> - (Please identify the primary business categories, products or services provided by your business)			
<b>16. NAME OF WORKERS' COMPENSATION INSURANCE CARRIER:</b>			
<b>17. LIST ALL OF THE VENDOR'S PRINCIPAL OWNERS AND THE THREE OFFICERS WHO DIRECT THE DAILY OPERATIONS OF THE VENDOR</b> (Attach additional pages if necessary):			
<b>a) NAME</b> (print)	<b>TITLE</b>	<b>b) NAME</b> (print)	<b>TITLE</b>
<b>c) NAME</b> (print)	<b>TITLE</b>	<b>d) NAME</b> (print)	<b>TITLE</b>

**STATE OF NEW YORK**  
**OFFICE OF THE STATE COMPTROLLER**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**

**A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A “YES,” AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE CONTRACTING AGENCY IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.**

<b>18.</b> Is the vendor certified in New York State as a (check please): <input type="checkbox"/> Minority Business Enterprise (MBE) <input type="checkbox"/> Women’s Business Enterprise (WBE) <input type="checkbox"/> Disadvantaged Business Enterprise (DBE)? Please provide a copy of any of the above certifications that apply.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>19.</b> Does the vendor use, or has it used in the past ten (10) years, any other Business Name, FEIN, or D/B/A other than those listed in items 2-4 above? <i>List all other business name(s), Federal Employer Identification Number(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>20.</b> Are there any individuals now serving in a managerial or consulting capacity to the vendor, including principal owners and officers, who now serve or in the past three (3) years have served as:  a) An elected or appointed public official or officer? <i>List each individual’s name, business title, the name of the organization and position elected or appointed to, and dates of service.</i>  b) A full or part-time employee in a New York State agency or as a consultant, in their individual capacity, to any New York State agency? <i>List each individual’s name, business title or consulting capacity and the New York State agency name, and employment position with applicable service dates.</i>  c) If yes to item #20b, did this individual perform services related to the solicitation, negotiation, operation and/or administration of public contracts for the contracting agency? <i>List each individual’s name, business title or consulting capacity and the New York State agency name, and consulting/advisory position with applicable service dates. List each contract name and assigned NYS number.</i>  d) An officer of any political party organization in New York State, whether paid or unpaid? <i>List each individual’s name, business title or consulting capacity and the official political party position held with applicable service dates.</i>	

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<b>21</b>	<p>Within the past five (5) years, has the vendor, any individuals serving in managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate<sup>1</sup> or any person involved in the bidding or contracting process:</p>	
<b>a)</b>	<p>1. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process;</p> <p>2. been disqualified for cause as a bidder on any permit, license, concession franchise or lease;</p> <p>3. entered into an agreement to a voluntary exclusion from bidding/contracting;</p> <p>4. had a bid rejected on a New York State contract for failure to comply with the MacBride Fair Employment Principles;</p> <p>5. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract;</p> <p>6. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited;</p> <p>7. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract;</p> <p>8. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or</p> <p>9. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract?</p>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
<b>b)</b>	<p>been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?</p>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
<b>c)</b>	<p>been issued a citation, notice, violation order, or are pending an administrative hearing or proceeding or determination for violations of:</p> <p>1. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety &amp; Health Administration (OSHA) or New York State labor law;</p> <p>2. state or federal environmental laws;</p> <p>3. unemployment insurance or workers' compensation coverage or claim requirements;</p> <p>4. Employee Retirement Income Security Act (ERISA);</p> <p>5. federal, state or local human rights laws;</p> <p>6. civil rights laws;</p> <p>7. federal or state security laws;</p>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>



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	<p>8. federal Immigration and Naturalization Services (INS) and Alienage laws;</p> <p>9. state or federal anti-trust laws; or</p> <p>10. charity or consumer laws?</p> <p><b><i>For any of the above, detail the situation(s), the date(s), the name(s), title(s), address(es) of any individuals involved and, if applicable, any contracting agency, specific details related to the situation(s) and any corrective action(s) taken by the vendor.</i></b></p>	
22.	<p>In the past three (3) years, has the vendor or its affiliates<sup>1</sup> had any claims, judgments, injunctions, liens, fines or penalties secured by any governmental agency? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgment, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open, unsatisfied, indicate the status of each item as "open" or "unsatisfied."</i></b></p>	
23.	<p>Has the vendor (for profit and not-for profit corporations) or its affiliates<sup>1</sup>, in the past three (3) years, had any governmental audits that revealed material weaknesses in its system of internal controls, compliance with contractual agreements and/or laws and regulations or any material disallowances? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the type of material weakness found or the situation(s) that gave rise to the disallowance, any corrective action taken by the vendor and the name of the auditing agency.</i></b></p>	
24.	<p>Is the vendor exempt from income taxes under the Internal Revenue Code? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>Indicate the reason for the exemption and provide a copy of any supporting information.</i></b></p>	
25.	<p>During the past three (3) years, has the vendor failed to:</p> <div style="margin-left: 20px;"> <p>a) file returns or pay any applicable federal, state or city taxes? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.</i></b></p> <p>b) file returns or pay New York State unemployment insurance? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>Indicate the years the vendor failed to file/pay the insurance and the current status of the liability.</i></b></p> </div>	
26.	<p>Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates<sup>1</sup> within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.</i></b></p>	

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**VENDOR RESPONSIBILITY QUESTIONNAIRE**

<b>27.</b>	Is the vendor currently insolvent, or does vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it? <i>Provide financial information to support the vendor's current position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the agency with an understanding of the vendor's situation.</i>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<b>28.</b>	Has the vendor been a contractor or subcontractor on any contract with any New York State agency in the past five (5) years? <i>List the agency name, address, and contract effective dates. Also provide state contract identification number, if known.</i>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
<b>29.</b>	In the past five (5) years, has the vendor or any affiliates <sup>1</sup> : a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded; b) received an overall unsatisfactory performance assessment from any government agency on any contract; or c) had any liens or claims over \$25,000 filed against the firm which remain undischarged or were unsatisfied for more than 90 days ? <i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.</i>	<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>

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<sup>1</sup> "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

**STATE OF NEW YORK**  
**OFFICE OF THE STATE COMPTROLLER**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**

State of:                    )  
                                  ) ss:  
County of:                )

**CERTIFICATION:**

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- has not altered the content of the questions in the questionnaire in any manner;
- has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- has supplied full and complete responses to each item therein to the best of his/her knowledge, information and belief;
- is knowledgeable about the submitting vendor's business and operations;
- understands that New York State will rely on the information supplied in this questionnaire when entering into a contract with the vendor; and
- is under duty to notify the procuring State Agency of any material changes to the vendor's responses herein prior to the State Comptroller's approval of the contract.

Name of Business	Signature of Owner/Officer_____
Address	Printed Name of Signatory
City, State, Zip	Title

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT 4****Contractor Certification**  
(Pursuant to Section 5-a of the Tax Law)**ST-220**  
(1/05)

For more information, see Publication 222, Question and Answers Concerning Section 5-a.

Contractor name				For office use only Contract number
Contractor's principal place of business		City	State	
Mailing address (if different than above)				Estimated contract value
Contractor's federal employer Identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number ( )		Contracting state agency		

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
 (name) (title)  
 of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and that:

**Part I. Contract services that are not services for purposes of Tax Law section 5-a**(Mark an **X** in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II - V.)

- ☐ The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not services within the meaning of Tax Law section 5-a.

(If you did not mark the box next to the statement in Part I, mark an **X** next to the applicable statement in Parts II through V.)**Part II. Contractor registration status**

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- ☐ As of the date of this certification, the contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part III. Affiliate registration status**

- ☐ As of the date of this certification, the contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

#### Part IV. Subcontractor registration status

- ☐ As of the date of this certification, the contractor does not have any subcontractors.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

#### Part V. Subcontractor affiliate registration status

- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has any affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF }

: SS.:

COUNTY OF }

On the day \_\_\_\_\_ of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_

,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_,

Town of \_\_\_\_\_,

County of \_\_\_\_\_,

State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): \_he is a duly authorized member of, \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

Registration No.

**Schedule A — List of affiliates, subcontractors, and affiliates of subcontractors**

A Relationship to Contractor	B Name	C Address	D ID Number	E Sales Tax ID Number	F Proof of Registration

Column A – Enter **C** if the contractor; do not complete columns C, D, and E. Enter **A** if an affiliate of the contractor; **S** if a subcontractor; or **SA** if an affiliate of a subcontractor, and complete columns B through F.

Column B – Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of person's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal identification number assigned to the person or person's business, as applicable.

Column E – Sales tax ID number - Enter only if different from federal ID number in column D.

Column F – Enter **CA** if a paper copy of the certificate of authority is attached; or **RC** if person is registered with DTF and has confirmed this status with DTF.

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

## Instructions

### General information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

### Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

*Commodities* means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

*Tangible personal property* means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

### Completing Form ST-220

#### Identification information

**Contractor name:** Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

**Contractor's principal place of business:** Enter a street address, not a PO box number.

**Mailing address:** Enter the address where contractor receives mail, if different than the principal place of business.

**Contracting state agency:** Enter the state agency awarding the contract to the contractor.

**Certification statement:** If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

### Part I – Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an **X**. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, services means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material



goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term services for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term taxable services for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed manner in any other

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manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

## Parts II through V

If the contract is covered under Tax Law section 5-a, you must mark an **X** in one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

## Schedule A

### Column A – Relationship to the contractor

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an **A**; if a subcontractor, enter an **S**; if an affiliate of a subcontractor, enter **SA**.

### Column B – Name

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

### Column C – Address

Enter the street address of the person's principal place of business. Do not enter a PO box.

### Column D – ID number

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

### Column E – Sales tax ID number

Enter the sales tax identification number, if different from the federal identification.

### Column F – Proof of registration

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTF, enter **RC**.

**Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.**